

**MINUTES OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**
Tuesday, September 4, 2012 – 9:00 a.m. – Room C445 State Capitol

Members Present:

Sen. Howard A. Stephenson, Senate Chair
Rep. Curtis Oda, House Chair
Sen. Gene Davis
Sen. Mark B. Madsen
Sen. Benjamin M. McAdams
Pres. Michael G. Waddoups
Rep. Neal B. Hendrickson
Rep. Carol Spackman Moss
Rep. Merlynn T. Newbold

Members Absent:

Speaker Rebecca D. Lockhart

Staff Present:

Mr. Arthur L. Hunsaker, Policy Analyst
Ms. Susan Creager Allred, Associate General Counsel
Ms. Tracey Fredman, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Committee Business

Chair Stephenson called the meeting to order at 9:22 a.m.

MOTION: Rep. Hendrickson moved to approve the minutes of the August 17, 2012, meeting. The motion passed unanimously. Sen. McAdams was absent for the vote.

2. Report: Current Title and Escrow Commission Rulemaking Process (R592-16 and R592-17)

Mr. Cortland Ashton, Title and Escrow Commission, discussed a provision of 2011 General Session H.B. 19, "Insurance Law Related Amendments," which requires the Title and Escrow Commission to promulgate a rule to define what it means for a title insurance producer to conduct a minimum mandatory search of real property. He presented background to draft rule, "R592-17, Minimum Mandatory Search Standards and Requirements," which he said contains unresolved areas of concern that could not be sufficiently revised without rewriting the rule. Mr. Ashton stated that the draft was allowed to lapse, and he briefed committee members on some issues of conflict.

Mr. Kirk Smith, Title and Escrow Commission, responded to committee members' questions regarding the lapse of draft "R592-16, Agency Supervision by Qualifying Licensee."

Mr. Peter Stevens, Attorney, Jones Waldo, discussed the work performed by title insurance agencies, including escrow services, and noted that many lending institutions across the U.S. are incorporating title insurance entities within their own companies to ensure the safety of the funds being handled through escrows. Mr. Stevens also spoke against the efforts being made by the Title and Escrow Commission on R592-17, and suggested that the commission is attempting to limit free market opportunities in the state.

Mr. Tim A. Krueger, LSI Title Insurance Agency of Utah, Inc., expressed concern with certain Title and Escrow Commission practices.

Mr. Brett Barrett, Deputy Commissioner, Utah Insurance Department, reported that the impetus for this rulemaking came through a reminder in December, 2011, that there was rulemaking required of the Title and Escrow Commission that had not been done. Mr. Barrett noted that the Insurance Department does not have title and escrow rulemaking authority, but attends every meeting of the Title and Escrow Commission and provides staff support and input. He explained that the difficulty of the situation arises from a conflict between the statutory requirement for the commission to define what the minimum mandatory search should be and contractual agreements as to the standards of search practices, which exist between underwriters and their agents.

MOTION: Sen. Davis moved that the committee draft a letter to the Legislative Management Committee requesting that the issue be referred to the Business and Labor Interim Committee. The motion passed unanimously. Sen. McAdams was absent for the vote.

3. Division of Water Quality Rulemaking Process for Preparing Changes to R317-4 Onsite Wastewater Systems

Mr. Ben Witt, Septic System Designer, discussed some issues of concern with the current draft changes to "R317-4 Onsite Wastewater Systems," which was not available to the committee for discussion. Mr. Witt stated that while he and other private professionals in the field had hoped to contribute to the process, they were not given the opportunity. Mr. Witt expressed concern that some local jurisdictions are already enforcing some of the changes in the draft rule, including conducting soil evaluations without first performing a percolation test, which is contrary to current rule.

Ms. Leah Ann Lamb, Assistant Director, Division of Water Quality, said that a draft of the rule will be posted on the division's website.

Mr. Jesse Lassley, Land Developer, addressed concerns with the drafting process of R317-4 and noted that he was also unaware of any involvement with stakeholders, developers, or engineering experts in the current rule draft.

Committee discussion followed. Mr. Witt and Mr. Lassley responded to committee members' questions.

Ms. Lamb stated that the implementation of R317-4 is delegated to the local health departments. She noted that they report back to the Division of Water Quality annually.

Mr. Tracy Richardson, Director of Environmental Health, Wasatch County Health Department, discussed the rule revision and noted that involvement from stakeholders has begun and will be a part of the discussion process.

Dr. Royal DeLegge, Director of Environmental Health, Salt Lake Valley Health Department, responded to committee members' concerns about the implementation of practices in some local jurisdictions, which are not yet in rule. Dr. DeLegge said that the intent is that a standard approach is used as much as is practical.

Mr. Leland Hogan, President, Utah Farm Bureau Federation, said the Farm Bureau is most interested in the stability of property values as they may be affected by this issue.

4. Bills that Require Rulemaking

Mr. Ken Hansen, Director, Division of Administrative Rules, distributed "Bills that Require Rulemaking: What is Required of Agencies?" Mr. Hansen gave an overview of rulemaking requirements and responded to committee members' questions about how to track rulemaking as bills are passed.

5. Committee Business

Future meetings were scheduled October 8, 2012 and October 30, 2012, at 9:00 a.m.

6. Adjourn

MOTION: Rep. Oda moved to adjourn the meeting. The motion passed unanimously. Pres. Waddoups was absent for the vote.

Chair Stephenson adjourned the meeting at 11:58 a.m.